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Letter Ruling 98-18: Sales Taxability of Surgically Implanted Orthopedic Devices

November 10, 1998

You request a letter ruling on the application of the Massachusetts sales tax to sales of certain implant products, e.g., bone plates, nails and external fixators, that are sold to hospitals and surgical centers in the Massachusetts. In support of your request, you provide the following facts about the products.

I. FACTS

The implant products are orthopedic devices that are surgically inserted or attached to bone for the purpose of bracing and/or supporting fractured bones. The implant products, by design, not only support or stabilize a fracture, thereby permitting uninterrupted healing of the fractured bone, but still allow for the continued mobility of the injured area. As a result, muscles surrounding the injured area are able to remain strong from continuous use. The implant products are made of either titanium or stainless steel. There are no prescriptions written for any of these implant products, as they become part of the operative notes in the patient's files. A more detailed description of each implant product follows:

1) Bone Plates:

Bone plates come in many different shapes and sizes and are generally manufactured for specific parts of the skeletal system. The plates are attached to the bones with screws. The plates correct the deformity created by the fracture and stabilize the bone. The surgeon will alter the bone plate in more than seventy-five percent of the surgeries to have it conform to that particular bone's contour. The minimum amount of time that this implant would remain in the body is six months, however more than fifty percent remain permanently. The decision to allow the implant to remain permanently, is made by both the doctor and patient, and is based upon the anatomical location, systemic complaints of the patient, and the risk of removal.

2) Nails:

Nails come in many different sizes and are also generally manufactured for specific parts of the skeletal system. The nails are inserted into the center of the bone cavity. The nails correct the deformity created by the injury and support the fractured bone to allow uninterrupted healing. The minimum amount of time that this implant would remain in the body is twelve months, however more than fifty percent remain permanently in the body. The decision to allow the implant to remain permanently, is made by both the doctor and patient, and is based upon the anatomical location,

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systemic complaints of the patient, and the risk of removal.

3) External Fixators:

External fixators come in several different shapes and sizes, thus allowing for use in supporting fractures in the arms and legs. They are composed of pins that are screwed into the bone and then attached to an external rod or tube that can be adjusted to various angles. External fixators correct the deformity created by a fracture and support the bone during healing. They are used primarily with open fractures. The amount of time that this implant would remain attached to the body is from several days (removed to use a different implant) to the entire period for which the injury takes to heal.

II. RULING

Based on the facts as you state them, sales of bone plates, nails and external fixators are exempt from sales tax under G.L. c. 64H, § 6(l).

III. DISCUSSION

Massachusetts imposes a five percent sales tax on retail sales of tangible personal property, unless otherwise exempt. G.L. c. 64H, §§ 1, 2. Massachusetts exempts from the sales tax certain types of health care products. Under G.L. c. 64H, § 6(l), "sales of artificial devices individually designed, constructed or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction or substitute for the bodily structure including the extremities of the individual" are exempt. A crippled person is defined in the American Heritage Dictionary, Second College Edition (1985), as "one who is partly disabled or lame." See LR 98-8. We determine that a person who has a fractured bone is crippled since the person is partially disabled due to the break, even if the disability is only temporary.

Based upon the facts as you state them, the purpose of the implant products is consistent with an artificial device individually designed as a brace, correction or substitute for the bodily structure of a crippled person. Therefore, we determine that the sale of bone plates, nails and external fixators qualify for exemption under the above quoted language in G.L. c. 64H, § 6(l).

Very truly yours,

/s/Bernard F. Crowley

Bernard F. Crowley, Jr.
for the Commissioner of Revenue

BFC:HMP:dms

LR 98-18